IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Smt.Sharda & vs. The State of Rajasthan.

D.B.Cri. Appeal No.1071/2003

Under Section 374 (2) Cr.P.C. against the judgment and conviction dated 16.09.03 passed by the Addl. Sessions Judge No.2 , (Fast Track), Dungarpur, in Sessions Case No. 69/2003.

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Date of Order: **25th July, 2007.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.Shambhoo Singh for the appellant.

Mr.JPS.Choudhary, Public Prosecutor.

Mr. Sanjay Mathur] for complainant.
Mr.Vipin Mankad]

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal has been filed by the accused appellant against the judgment of Addl. Sessions Judge (Fast Track) , Dungarpur in Sessions Case No.69/2003 (28/2001) dated 16.09.03.

The Prosecution was was initiated on the basis of an application filed by complainant PW/3 Purushottam to the Dy. Superintendent of Police, Sagwara. On the basis of an application by the said Purushottam a case under section 498A IPC was filed against these accused persons.

During the course of investigation the investigating agency considered three dying declarations , two recorded by the police, and one recorded by the executive magistrate at Ahmedabad. On finding that a case is made out against the accused , charge sheet was filed.

The case was committed to the court of Sessions, and in turn was transferred to the trial court for trial. Soon after the case was recorded , Smt.Sarla who was then an injured, died and therefore the case was converted under Section 302 IPC. Charge under Section 203 and 298A IPC was framed against the accused, who denied the charges and claimed trial.

At the trial prosecution examined 31 witness and exhibited 22 documents. One defence WITNESS was examined and four documents were exhibited for the defence.

PW/1 Girija Shanker is a police official who stated that he examined Smt.Sarla and her statement is Ex.P/3 on which PW/19 Ramanlal signed. The police had examined the deceased twice over. One statement is Ex.P/3 and another statement is Ex.D/3. These two statements are recorded by the police officials. On 16.08.99 Ex.D/3 was recorded at 09.00PM and Ex.P/3 was recorded on 16.08.99 at 11.15PM. Both these documents were recorded by police. In none of them it has been stated that they are being declared as dying declarations. However, another statement of Smt. Sarla was recorded by the executive magistrate at Ahmedabad, where she was being treated , on 19/20. 08.99. Recording of the statement started at 11.30 and it continued past 12.00 in the midnight. Therefore, both the dates figure on the document Ex.P/18. It is this document Ex.P/18 which is basically the basis of convicting the accused appellant. The trial court had, however, acquitted the other accused persons at the trial. The learned counsel for the appellant , assailing the finding of the trial court, has stated that in the first statement and second statement , which were recorded after the incident on the same day,

the deceased has not attributed any role to any of the accused persons who were put to trial. It was only on 19.08.99, while she was being treated at Ahmedabad, and her relations by that time had come to her contact, that is the reason of implication of the accused appellant and other accused. Thus, the learned counsel for the appellant has stated that in view of the law laid down by various courts, Lella Srinivasa Rao vs. State of Andha Pradesh (2004 (2) Criminal Court Cases 390 (S.C.), Chinnamma vs. State of Kerala (2004 (4) Criminal Court cases 16 (S.C.), Kundan Lal & Ors. vs. The State of Rajasthan (1999 Cr. L.R. (Raj.) 477), Teju (Smt.) vs. The State of Rajasthan (2005 (2) Cr.L.R. (Raj.)1253, and Deshram , s/o Shri Chandgi Ram vs. The State of Rajasthan (2005 (2) Cr.L.R. (Raj.) 1345), if there are more than one dying declaration then implicit reliance should not be placed on the dying declaration and in that background it has been canvassed that the accused should be held not guilty of the charges levelled against her.

The learned counsel further stated that a false case has been foisted by the prosecution against the other accused persons under section 498A and when a false case is made out against so many persons then it should be presumed that the prosecution has the intention of implicating so many accused persons and in that light ,it

has been canvassed that the prosecution should not be believed. There were strained relationship between the husband and wife, as documents are available on record to suggest the same and in that background the deceased having committed suicide, or an accidental death, cannot be ruled out. In any case the document Ex.P/18, can be considered to be the result of tutoring of the family of the deceased because, before that statement was recorded , the deceased had an opportunity to meet, talk and converse with her family members and that is the result of tutoring and, therefore, should be excluded from consideration.

Per contra, the learned Public Prosecutor urged that police has recorded two statements. It never happens that police records two statements during the investigation. None of the statements has been recorded as dying declaration. It was not stated by the police before recording the statement that the deceased was in danger and, therefore, before her death, second statement was sought to be recorded. The learned Public Prosecutor further urged that the trial court has observed that Ex.P/18 is the correct disposition of the situation and facts. If the same was a result of tutoring then as has been done in the other part of the prosecution case, the deceased too would have named the other accused persons

and thus having not implicated any other accused persons in her statement. It signifies that she was speaking the truth. Because as

per the intention of the other witnesses she has not fallen prey to them and has not named any other accused persons in her statement but the mother -in-law. The differences with the mother in law are made out very boldly and, therefore, a serious animus was being nursed by the mother in law and, therefore, she suppressed her animosity by pouring kerosene on the deceased , and that certifies the correctness of the statement recorded by the learned Magistrate at Ahmedabad.

The learned Public Prosecutor has further taken resort to the findings of the trial court where in it has been stated that PW/10 Silwans Patel has stated in his statement that he had seen smoke coming out of the room situated on the first floor. He had seen Sarla burning in that room from the window, having scaled a height. According to the dying declaration Ex.P/18, she was burned in the first floor room. PW/10 Silwans Patel , is neither a relation nor a person having any grudge against the accused person. He is an independent witness. He has deposed on the situation as obtaining at the time when the occurrence took place. He has deposed about the

incident having taken place at the first floor room. He has seen smoke coming out of the room. Thus, the statement of PW/10 clearly corroborates Ex.P/18 . There being an independent

corroboration to Ex.P/18, it lends corroboration to the dying declaration, Ex.P/3.

The learned counsel has further stated that in terms of Ex.P/3, and according to PW/10 Silwans Patel, the scene of occurrence was kitchen , whereas in kitchen no smoke has been indicated by the investigating agency, on its wall. The trial court has noticed that kitchen was nicely laid out and there was no indication that any burning had taken place in the kitchen. According to , Ex.D/3 , the incident had taken place in the kitchen. That being the position, the circumstances speak very loudly that the kitchen was not the scene of occurrence. The investigating agency having recorded two police statements of the deceased, in the same tenure, has tried to support the accused persons in a tacit manner.

The learned Public Prosecutor has laid much stress on the statement of PW/10 Silwans Patel, an independent witness , Ex.P/18 and the fact that the upper room was not visited by the

Investigating Officer and thus has ignored to take note of the scene of occurrence and absence of circumstances of the occurrence having taken place in the kitchen.

We have heard learned counsel for the parities and have given our thoughtful consideration to the material available on record.

There is no explanation obtaining on record to explain the conduct of the prosecution as to why two statements were recorded by the police of the deceased. This only creates a doubt. In one of the statement, Ex.P/3, there are signatures of the father of the deceased that when he was informed that she has been taken to Ahmedabad and certain papers are required to be signed he had signed certain papers. At that crucial hour, making of certain signatures on certain papers have reached his position and those explanation appears to be plausible. Ex.P/18 , dying declaration, stands corroborated by the testimony of PW/10 Silwans Patel, an independent person showing that the deceased was burning in the upper room and she was shouting and smoke was coming from the upper room.

Thus, there is independent corroboration by PW/10 Silwans Patel, available on record . In that background, reliance can easily be placed on a statement recorded by the Magistrate . The possibility of torturing has been negated by the trial court by observing that if that was true, the deceased would have named the other accused persons, who were named by the other prosecution witnesses.

Thus, the trial court had given a fair term to the statement Ex.P/18 and has believed that, to base the conviction. In our view, rightly so. There is enough material available on record to show that the investigation was not fair. It had been biased against the complainants and in that view of the matter, the grain is required to be separated from the sheaf and in that light the attempt by the trial court has convicted the accused appellant Sharda. We feel that the incident had occurred, as has been described in Ex.P/18, and that is right exposition of the incident. We would hold that Ex.P/18 is reliable. Thus, the conviction and sentence passed against the accused appellant is liable to be held correct and in that view of the matter, we think that the the trial court has rightly convicted and sentenced the accused appellant.

In the result, the appeal is merit less, hence dismissed. The conviction and sentence passed against the accused person is maintained.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

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